

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 843 Pub. Meetings and Records/Meetings Between Two Members of Board or Commission

SPONSOR(S): Donalds and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1004

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee		Moore	Harrington
2) Local, Federal & Veterans Affairs Subcommittee			
3) Government Accountability Committee			

SUMMARY ANALYSIS

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. It requires all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public. In addition, the "Government in the Sunshine Law" or "Sunshine Law," further requires all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision at which official acts are to be taken to be open to the public at all times.

The bill authorizes two members of any board or commission, including persons elected or appointed to such board or commission who have not yet taken office, of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision with a total membership of at least five members to meet in private and discuss public business without providing notice of such meeting, recording the meeting, or making such records open to public inspection. Such meetings are exempt from open meetings requirements if:

- The members do not adopt a resolution or rule to take any other formal action, or agree to do so at a future meeting, at such meeting. A resolution or rule adopted, or any other formal action taken, in violation of this prohibition is void.
- The members do not discuss an appropriation, a contract, or any other public business that involves the direct expenditure of public funds to a private vendor.
- The meeting is not intended to frustrate or circumvent the purpose of the open meetings laws.

The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

The bill does not appear to have a fiscal impact on the state or local governments.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates new public record and public meeting exemptions; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.01, F.S., provides that it is the policy of the state that all state, county, and municipal records are open for personal inspection and copying by any person, and that it is the responsibility of each agency¹ to provide access to public records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any public record unless an exemption applies. The state's public records laws are construed liberally in favor of granting public access to public records.

Public Meetings Law

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. It requires all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.

Public policy regarding access to government meetings is also addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision at which official acts are to be taken to be open to the public at all times. The board or commission must provide reasonable notice of all public meetings.² Minutes of a public meeting must be promptly recorded and be open to public inspection.³

No resolution, rule, or formal action is considered binding, unless action is taken or made at a public meeting.⁴ Acts taken by a board or commission in violation of this requirement are considered void,⁵ though a failure to comply with open meeting requirements may be cured by independent final action by the board or commission fully in compliance with public meeting requirements.⁶

Public Record and Public Meeting Exemptions

Art. I, s. 24(c) of the State Constitution authorizes the Legislature to provide by general law for the exemption of records or meetings from the requirements of Art. I, s. 24(a) and (b) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

¹ Section 119.011(2), F.S., defines the term "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

² Section 286.011(1), F.S.

³ Section 286.011(2), F.S.

⁴ Section 286.011(1), F.S.

⁵ *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010).

⁶ *Finch v. Seminole County School Board*, 995 So. 2d 1068 (Fla. 5th DCA 2008).

The Open Government Sunset Review Act⁷ further provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.⁸

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁹

Effect of Proposed Changes

The bill authorizes two members of any board or commission, including persons elected or appointed to such board or commission who have not yet taken office, of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision with a total membership of at least five members to meet in private and discuss public business without providing notice of such meeting, recording the meeting, or making such records open to public inspection. Such meetings are exempt from open meeting requirements if:

- The members do not adopt a resolution or rule to take any other formal action, or agree to do so at a future meeting, at such meeting. A resolution or rule adopted, or any other formal action taken, in violation of this prohibition is void.
- The members do not discuss an appropriation, a contract, or any other public business that involves the direct expenditure of public funds to a private vendor.
- The meeting is not intended to frustrate or circumvent the purpose of the open meeting laws.

The bill also provides that the records of such meetings are exempt from public disclosure.

The bill provides a public necessity statement as required by the State Constitution, specifying that it is a public necessity to protect meetings between two board or commission members under certain circumstances in order to facilitate a more thorough vetting of policies and appropriations that such members are responsible for examining and understanding.

The bill provides for repeal of the public record and public meeting exemptions on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

B. SECTION DIRECTORY:

Section 1. amends s. 286.011, F.S., relating to public meetings and records.

Section 2. provides a public necessity statement.

Section 3 provides an effective date of July 1, 2017.

⁷ See s. 119.15, F.S.

⁸ Section 119.15(6)(b), F.S.

⁹ Section 119.15(3), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an impact on state government revenues.

2. Expenditures:

The bill does not appear to have an impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

The bill does not appear to have an impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates new public record and public meeting exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates new public record and public meeting exemptions; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates public record and public meeting exemptions for meetings between two members of any

board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision if the board or commission has at least five total members and the records of such meetings. The public record and public meeting exemptions facilitate a more thorough vetting of policies and appropriations that such members are responsible for examining and understanding. The exemptions do not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Public Record Exemption

The bill's enacting clause provides that the bill relates to public meetings and public records. Lines 43-44 of the bill provide that "such records" are exempt from public disclosure; however, it is not clear what records are protected. As drafted, the bill does not appear to require the creation of any records.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.